HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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W.A.V.M.P.No.1001 of 2007
And
WRIT APPEAL No. 389 OF 2007

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Between:

Bogireddy Chandra Reddy & another

… Appellants

and

The Mandal Revenue Officer,
Vetapalem, Vetapalem Mandal,
Prakasam District & another

... Respondents

:: J U D G M E N T ::

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Counsel for the appellants : Shri Sai Kalyan Chakravarthy for
Shri D.V. Sitharama Murthy

Counsel for the respondents : Government Pleader for Revenue

5th October, 2007

Per G. S. Singhvi, CJ

This is an appeal for setting aside order dated 15.03.2007 passed by the learned Single Judge in Writ Petition No.2572 of 2007, whereby he refused to interfere with the action taken by Mandal Revenue Officer, Vetapalem Mandal, Prakasam District (respondent No.1 herein) to dispossess the appellants from the land assigned to them.

The appellants were assigned different parcels of land in Vetapalem Village and Mandal, Prakasam District in 1978. Respondent No.1 issued D-form pattas and pattedar pass books in favour of the appellants. Their names were also mutated in the revenue records. The appellants claim to have planted mango, sapota and amla trees and have been doing cultivation.

In February 2007, the appellants filed Writ Petition No.2572 of 2007 for grant of a declaration that the action of respondent No.1 to dispossess them from land measuring Ac.1.80 cents in Survey No.298/2 and Ac.1.13 cents in Survey Nos.298-1, 298-2 and 297-11 and cutting the trees of mango, sapota and amla is illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India. In paragraph 2 of the writ affidavit filed by him, appellant No.1 – Bogireddy Chandra Reddy averred that both the petitioners are in possession of the assigned land since 1978; that the land has been brought under cultivation by planting mango, sapota and amla trees and they have obtained power connections. In paragraph 3 of the affidavit, appellant No.1 mentioned about their threatened dispossession by respondent No.1 on 08.02.2007 and averred that the land assigned to them cannot be allotted to others without issuing show cause notice and giving them opportunity of hearing. In paragraph 5 of the affidavit, the deponent reiterated that they cannot be dispossessed from the assigned land without holding enquiry and without giving them opportunity of hearing. For better appreciation of the issue arising in the appeal, paragraphs 3 and 5 of the affidavit of appellant No.1 are reproduced below:

"3. I submit that the 1st respondent along with her sub staff on 08.02.2007 at 11.30 A.M. came over to our lands and started measuring our lands and trey to divide our lands into plots. We objected the 1st respondent for measuring our lands and we requested the 1st respondent to reveal the reason for measuring our lands. We were replied that our lands are allotted for house sites to landless poor and the sub staff of the 1st respondent at the

instructions of 1st respondent started cutting our mango trees. On our specific request to issue a show cause notice and to conduct an enquiry before allotting our lands to house sites was not heeded to. At the outset, I submit that our pattas are in force and it is not cancelled by any authority. The1st respondent without givng any opportunity to us and without issuing any show cause notice and without conducting any enquiry and ignoring the assigned pattas held by us cannot allot our respective lands for house sites. On our earnest request the 1st respondent and her sub staff went away stating that the 1st respondent is helpless unless who obtained an order from a Court of law as she was under pressure by political leaders to allot our lands for house sites.

5. I submit that as long as our assigned pattas are in force and valid the 1st respondent has no jurisdiction or authority to dispossess us from our respective assigned lands. I further submit that the 1st respondent has no jurisdiction or authority to cut the trees on our lands on the ground that she has allotted our lands for house sites is illegal, arbitrary in as much as the1st respondent has not issued any show cause notice and did not conduct enquiry and no allegations made against us and we have not been given any opportunity by the 1st respondent. Hence, the action of the 1st respondent to dispossess us from our respective lands and orally declaring that our lands are allotted for house sites under the 'Indiramma Pathakam' is illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India."

In her affidavit, Smt. K. Rajya Lakshmi, who was then holding the post of Mandal Revenue Officer, Vetapalem averred that writ petitioner No.2 – Bogireddy Koti Reddy sold away 0.68 cts. of assigned land to Pogadadanda Ravi Kumar, Lecturer, St. Ann's College of Engineering, Challareddypalem Village of Vetapalem Mandal vide agreement dated 10.4.2006 and the purchaser was trying to sell the land by making house-site plots. Similarly, petitioner No.1 also sold a portion of the assigned land to Pogadadanda Ravi Kumar. Therefore, after issuing notice dated 30.12.2006 to the purchaser, the land was resumed vide order dated 29.1.2007. Paragraphs 2 to 5 of the affidavit read as under:

"2. It is respectfully submitted that an extent of Ac.0.45 cents in Sy.No.297/11 of Ramannapeta h/o Vetapalem (V) was assigned to

Bhogireddy Koti Reddy (2nd petitioner) in1385 Fasli and during course of enquiry of the Mandal Revenue Officer, Vetapalem, the assignee Bhogireddy Koti Reddy has sold away the land to Pogadadanda Ravi Kumar, Lecturer St.Ann's College of Engineering, Challareddypalem Village of Vetapalem (M) under sale agreement with General Power of Attorney duly noting the wrong Sy.No. as 297/8, 9 vide regd. Document No.1830/06 dt. 10.04.2006 for an extent of Ac.0.68 cents. But physically the land in Sy.No.297/11 measuring 0.45 cents is under the occupation of the purchaser Pogadadanda Ravi Kumar. Actually the lands in Sy.No.297/B and 9 measuring an extent of Ac.1.81cents were assigned to others but they have also sold away the land to Pogadadanda Ravi Kumar, Lecturer of Vetapalem Mandal.

Sy.No. 297/B	-	Ac.0.85	
Sy.No.297/9	-	Ac.0.96	Doct. No. 1645/06 dt. 27.3.2006
Total		Ac.1.81	

The purchaser is trying to sell away the land by making house site plots since the land is nearer to residential locality. I have inspected the land in Sy.No.297/11 and noticed that there is no standing trees and crop is on ground, the land is vacant and sandy soil. Since I noticed the violation u/s 3(2) of A.P. Assigned Lands (Prohibition of Transfer) Act, 1977, I have issued a notice in Form 1 to the purchaser Pogadadanda Ravi Kumar vide this office Rc.B/497/2006 dt. 30.12.2006. The notice was served on the wife of the purchaser on 12.1.2006 but no explanation has been received from the purchaser. After observing usual formalities the land in Sy.No.297/11 measuring an extent of Ac.0.45 cents was resumed in favour of Govt. along with the other lands which were purchased by the purchaser Sri P. Ravi Kumar vide Rc.B/497/2006 dt. 29.1.2007 and the lands were taken possession on 29.1.2007. Aggrieved by these orders the assignee filed the WP suppressing the real facts.

3. In reply to para 2, it is respectfully submitted that an extent of Ac. 0.45 cents in Sy.No.297/11 of Vetapalem (V) was assigned to the 2nd petitioner in the fasli 1385, since then the land is vacant and no crop and no standing trees are raised in it, but the land has got house sites potentiality the petitioner sold away the land to Pogadadanda Ravi Kumar duly noted the wrong Sy.No. as 297/8 and 9.

It is respectfully submitted that the petitioners have sold away the Ac.1.76 cents to Pogadadanda Ravi Kumar with false Sy.Nos. as shown below:

S.No.	Regd. Doct. No.	Sy.No.	Ext.	Name of the executants
1.	1830/06 dt.10.4.2006	297/8,9	Ac.0.68	Bhogireddy Koti Reddy (2nd petitioner) Bhogireddy Yanadi Reddy
2.	1831/06 dt.10.4.2006	297/8,9	Ac.1.08	Bhogireddy Chandra Reddy, S/o Veera Reddy (1st petitioner)
		Total	Ac.1.76	

Actually the above lands in Sy.No.297/8 and 9 have assigned to Naka Narayana Reddy and Nakka Narasimha Reddy for an extent of Ac.0.85 and 0.96 cents respectively (total Ac.1.81 cents) and these assignees were also sold away the land to the same purchaser, similarly the petitioners in the writ petition were also sold away the adjacent lands to the same purchaser showing the false Sy.No. in regd. documents. It is not correct to say that the land is in physical possession and enjoyment of the petitioner. The land was sold way to the purchaser.

4. In reply to para 3, it is respectfully submitted that after observing usual formalities, the land in sy.No.297/11 measuring an extent of A.0.45 cents was resumed in favour of Govt. along with the other lands which was purchased by the purchaser P. Ravi Kumar vide Rc.B/497/06 dt. 29.1.2007 and the lands were taken possession on 29.1.2007. Aggrieved by these orders the assignee filed the WP suppressing the read facts. Hosue site pattas were also granted to the beneficiaries selected under Indiramma Programme on 01.02.2007 and stones were also planted. It is not correct to say that these lands were brought into cultivation by planting Mango, Supota and Usiri trees etc. the land is vacant on ground up to my inspection on 15.12.2006 and upto taking possession of the land on 29.01.2007.

5. In reply to para 4, it is respectfully submitted that after observing usual formalities, the land in Sy.No.297/11 measuring Ac.0.45 cents along with other lands taken possession vide this office proceedings Rc.B/497/06 dt. 29.1.2007 and house pattas were issued, but the lands shown in the affidavit in Sy.No.298/1 & 2 of the petitioners have not yet taken possession. Out of the total extent shown in the affidavit i.e. Ac. (1.80 + 1.13) Ac.2.93 cents, only Ac.0.45 cents in Sy.No.297/11 was taken possession."

Appellant No.1 filed rejoinder-affidavit and reiterated that they cannot be dispossessed from the assigned land without holding an

enquiry in accordance with the rules of natural justice.

The learned Single Judge did not consider the appellants' plea of violation of the rules of natural justice and dismissed the writ petition by observing that they had sold the land to Shri P. Ravi Kumar in violation of the prohibition contained in Section 3(2) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act') and that the order cancelling assignment was passed after giving notice and opportunity of hearing to the occupant. The learned Single Judge also rejected the contention of the counsel appearing for the appellants that his clients are entitled to re-assignment of land in terms of Section 4(1)(b) of the Act, as amended by Andhra Pradesh Assigned Lands (Prohibition of Transfers) (Amendment) Ordinance, 2006.

We have heard Shri Sai Kalyan Chakravarthy, learned counsel for the appellants and learned Government Pleader for Revenue and critically examined the record, including affidavit dated 06.06.2007 of Shri A.P.CH. Nageswara Rao, Tahasildar, Vetapalem filed in this appeal and annexed documents.

Sections 3 and 4 which contain prohibition against transfer of assigned lands and provide for consequences of such transfer read as under:

"**3.Prohibition of transfer assigned lands:**

(1) Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purpose of cultivation or as a house-site then, notwithstanding to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provision

of sub-section (1) or sub-section (2) shall be deemed to be null and void.

(4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) shall be deemed to be null and void.

(5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house-site on the date of such commencement.

4. Consequence of breach provisions of Section 3:

(1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may, by order-

(a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and

(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to land less poor persons in accordance with the rules for the time being in force;

Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the government for assignment to any other landless poor person.

(2) Any order passed in Revision under Section 4-B and subject to such order, the decision in appeal under Section 4-A and subject to the said orders in Revision and Appeal, any order passed under sub-section (i) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any Court in respect of any proceedings taken or about to be taken by any officer or authority or Government in pursuance of any powers conferred by or under this Act.

(3) For the purposes of this section, where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of sub-section (1) of Section 3."

Section 4(1)(b), as amended by 2006 Ordinance, which was subsequently replaced by Amendment Act of 2007 reads as under:

"4. Consequences of breach of provisions of Section 3:

(1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may by order -

(b) restore the assigned land, other than those lands/areas as may be notified by the Government from time to time in public interest and for public purpose:--

i) to the original assignee, if he or she is eligible as per the norms fixed in this behalf, as on the date of restoration for one time; or

ii) assign to other eligible landless poor person.

Provided that where the original assignee or his legal heir, after the first restoration transfers the assigned land, the land shall be resumed for assignment to the other eligible landless poor.

Provided further that if no eligible landless poor persons are available in the village/area, the resumed land will be utilized for public purpose.

Explanation: For the purpose of this clause, "public interest" and "public purpose" shall mean and include, the Weaker Section Housing, Public Utility, Infrastructure development, Promotion of Industries and Tourism or for any other Public purpose."

A reading of the plain language of sub-sections (1) and (2) of Section 3 makes it clear that the assigned land cannot be transferred and no person can acquire any assigned land either by purchase, gift, lease, mortgage, exchange or otherwise. Sub-section (3) of Section 3 contains deeming provision and lays down that any transfer or acquisition made in violation of sub-sections (1) and (2) shall be deemed to be nullity. Section 4 empowers the District Collector or any officer not below the rank of Mandal Revenue Officer (now Tahsildar), who is authorised by the District Collector, to take possession of the assigned land after satisfying himself that such contravention has taken place. Section 4(1)(b) provides for restoration of the land to the assignee.

The question whether the assigned land has been transferred by way of sale etc. in violation of the prohibition contained in sub-section (1) or (2) of Section 3 is essentially a question of fact which can be determined by the competent authority only after making an enquiry

by associating the assignee. The satisfaction envisaged in Section 4(1) can also be reached by the concerned authority only after holding an enquiry in the matter. This necessarily implies giving of notice to the assignee so as to enable him to show cause against the action proposed to be taken in terms of Section 4(1). The absence of an express provision for giving notice to the assignee as a condition precedent for taking possession of the assigned land on the premise that the same has been transferred in violation of the provisions contained in Section 3(1) or (2) is not sufficient to exclude the applicability of the rule of hearing i.e. audi alteram partem. It need no emphasis that once the land is assigned to a person by treating him as landless poor, he acquires a valuable right and such right cannot be taken away without giving him reasonable opportunity of hearing. This has been recognised even by the government, which has framed the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 2007 vide G.O.Ms.No.208, Revenue (Assn.POT) dated 22.2.2007, and incorporated express requirement of giving notice to the transferor as also the transferee (New Rule 3).

The question whether the rule of audi alteram partem is applicable to purely administrative actions is no longer res integra and must be treated as settled by the judgments of the Supreme Court in **State of Orissa v. Dr. Binapani Dei**[1], **A.K. Kraipak v. Union of India**[2], **Maneka Gandhi v. Union of India**[3], **S.L. Kapoor v. Jagmohan**[4], **Swadeshi Cotton Mills. v. Government of U.P.**[5], and **Olga Tellis v. Bombay Municipal Corporation**[6]. In **State of Orissa v. Dr. (Miss) Binapani Dei**, the Supreme Court considered whether the rules of natural justice are applicable to purely administrative actions and answered the same in affirmative. The propositions laid down in that judgment read as under:

" 1) An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

2) It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

The same rule has been reiterated in **A.K. Kraipak v. Union of India** (supra), **S.L. Kapoor v. Jagmohan** (supra)**, Swadeshi Cotton Mills Co. Ltd. v. Union of India** (supra)**, Maneka Gandhi v. Union of India** (supra) and **Olga Tellis v. Bombay Municipal Corporation** (supra).

If the case in hand is examined in the light of the above-noted provisions, we do not find any difficulty in granting declaration that the action taken by respondent No.1 to deprive the appellants of the land assigned to them is vitiated due to violation of the rules of natural

justice because it is not in dispute that before seeking to take over possession of the assigned land, respondent No.1 did not give notice and opportunity of hearing to either of the appellants. The learned Government Pleader argued that notice dated 30.12.2006 issued to Shri P. Ravi Kumar requiring him to show cause against the taking over of the possession of the land assigned to the appellants on the premise that the same had been transferred in violation of Section 3 of the Act does not commend acceptance. The notice given to the so-called purchaser of the assigned land cannot be treated as a substitute of the notice required to be given to the appellants before they could be deprived of their right over the assigned land. In this context, it is significant to mention that the respondents have not denied the assertion contained in the reply affidavit of appellant No.1 that transfer of Ac.0.68 cents of land comprised in Survey No.297/8 under a wrong impression that the same belongs to his family members was cancelled by registered deed dated 26.12.2006. Therefore, it is reasonable to take the view that as on the date of issue of notice to Shri P. Ravi Kumar, the transfer made in his favour had been annulled. If the appellants had been put to notice, they could have brought all the facts to the notice of respondent No.1 in a correct perspective and even pleaded for restoration of the assignment. However, the fact of the matter is that no notice or opportunity of hearing was given to them before taking possession of the assigned land on the assumption that the same had been transferred in contravention of the provisions contained in Section 3(1) of the Act.

In view of the above conclusion, we do not consider it necessary to deal with the issue relating to applicability of amended Section 4(1)(b) of the Act to the case of the appellants because we feel that this issue can be raised by them as and when notice is given by the competent authority for determination of the issue regarding the alleged transfer of assigned land in violation of the mandate of Section

3 (1) or (2).

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and it is declared that the action taken by respondent No.1 to take possession of the land assigned to the appellants is illegal and that they are entitled to continue in possession notwithstanding order dated 29.01.2007 passed by respondent No.1. However, it is made clear that this judgment will not preclude the competent authority from taking action in accordance with law after giving notice and opportunity of hearing to the appellants. If the appellants are served with notice for taking action in terms of Section 3 (1) or (2) read with Section 4 of the Act, then they shall be entitled to claim benefit of Section 4(1)(b).

G.S. SINGHVI, CJ

Date: 05-10-2007

C.V. NAGARJUNA REDDY, J

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[1] AIR 1967 SC 1269
[2] AIR 1970 SC 150
[3] AIR 1978 SC 597
[4] AIR 1981 SC 136
[5] AIR 1981 SC 818
[6] AIR 1986 SC 180